

# OFFICES AND OFFICERS

## CHAPTER 539

SENATE BILL NO. 2269  
(Stenehjem)

### DISTRICT COURT DEPUTY RESIDENCY

AN ACT to amend and reenact section 44-03-04 of the North Dakota Century Code, relating to residency requirements of deputy clerks of district courts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-03-04. Officials to be residents and citizens - Exception for deputy clerks of district court. No person shall be appointed as deputy in any state, county, or municipal office, nor as a member or officer upon any official board, ~~of any kind,~~ of the state, or of any county or municipality of the state, who is not a citizen of the United States, and who ~~shall not be~~ is not a bona fide resident of the state. However, a clerk of the district court may appoint a deputy who is a bona fide resident of an adjoining county in another state.

Approved April 11, 1989  
Filed April 12, 1989

## CHAPTER 540

SENATE BILL NO. 2041  
(Legislative Council)  
(Interim Jobs Development Commission)

### ECONOMIC DEVELOPMENT RECORDS CLOSED

AN ACT for the exemption of certain economic development records from disclosure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Certain economic development records exempt from disclosure.

1. The following economic development records and information are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:
  - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, or expand within this state. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
  - b. Trade secrets and commercial or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or technical assistance, or other forms of business assistance.
2. Section 44-04-19 and section 5 of article XI of the Constitution of North Dakota do not apply to that part of a meeting of a public economic development agency held to consider or discuss records and information exempt from public inspection under subsection 1 if:
  - a. The partial closure of the meeting is authorized under this subsection by a motion made and carried in a meeting open to the public;
  - b. Only the records and information exempt from public inspection under subsection 1 are considered or discussed at the closed portion of the meeting; and
  - c. Final action concerning the records and information is taken at a meeting open to the public.

Approved March 9, 1989  
Filed March 9, 1989

## CHAPTER 541

SENATE BILL NO. 2183  
(Committee on Judiciary)  
(At the request of the Attorney General)

### **UNDERCOVER OFFICERS CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to information concerning undercover law enforcement officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records of undercover law enforcement officers. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential and exempt from the provisions of section 44-04-18. For purposes of this section, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as someone other than a law enforcement officer while engaging in the investigation of a violation of law.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 542

HOUSE BILL NO. 1193  
(Committee on Industry, Business and Labor)  
(At the request of the Bank of North Dakota)

### TRADE SECRETS AND COMPUTER SOFTWARE CONFIDENTIALITY

AN ACT to provide for confidentiality of certain trade secrets and commercial and financial information obtained by any state agency under a contract or a license agreement and confidentiality of computer software program for which any state agency acquires a copyright or a patent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Confidentiality of trade secrets and commercial and financial information. Trade secrets and commercial and financial information is confidential if of a privileged or confidential nature and obtained by any state agency, institution, department, or board from any person or organization under a contract or license agreement entered into by any state agency, institution, department, or board. The term "trade secrets" includes a computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use.

SECTION 2. Confidentiality of computer software programs. Any computer software program or component of a computer software program for which any state agency, institution, department, or board acquires a copyright or a patent is confidential.

Approved March 14, 1989  
Filed March 15, 1989

## CHAPTER 543

HOUSE BILL NO. 1062  
(Legislative Council)  
(Interim Legislative Procedure and Arrangements Committee)

### LEGISLATIVE RECORDS

AN ACT relating to records and information related to the legislative branch; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Access to legislative records and information. The following records, regardless of form or characteristic, of or relating to the legislative council, the legislative assembly, the house of representatives, the senate, or a member of the legislative assembly are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota: a record of a purely personal or private nature, a record that is attorney work product or is attorney-client communication, a record that reveals the content of private communications between a member of the legislative assembly and any person, and, except with respect to a governmental entity determining the proper use of telephone service, a record of telephone usage which identifies the parties or lists the telephone numbers of the parties involved. This section does not apply to any record distributed at a meeting subject to section 44-04-19 and section 5 of article XI of the Constitution of North Dakota.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 31, 1989  
Filed March 31, 1989

## CHAPTER 544

SENATE BILL NO. 2222  
(Committee on Judiciary)  
(At the request of the Attorney General)

### **CRIMINAL INVESTIGATIVE INFORMATION CONFIDENTIAL**

AN ACT to provide for an exception to the open records law for law enforcement criminal intelligence and criminal investigative information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Criminal intelligence information and criminal investigative information - Nondisclosure - Record of information maintained.

1. Active criminal intelligence information and active criminal investigative information are exempt from the provisions of section 44-04-18. A criminal justice agency shall maintain a list of all files containing active criminal intelligence and investigative information which have been in existence for more than one year. With respect to each file, the list must contain the file's number or other identifying characteristic, and the date the file was established. The list required under this subsection is subject to section 44-04-18.
2. "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal intelligence information must be considered "active" as long as it is related to intelligence gathering conducted with a reasonable good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
3. "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Criminal investigative information must be considered "active" as long as it is related to an ongoing investigation that is continuing with a reasonable good faith anticipation of securing an arrest or prosecution in the foreseeable future.
4. "Criminal justice agency" means any law enforcement agency, or prosecutor. The term also includes any other unit of government charged by law with criminal law enforcement duties or having custody of criminal intelligence or investigative information for

the purpose of assisting law enforcement agencies in the conduct of active criminal investigations or prosecutions.

5. "Criminal intelligence and investigative information" does not include:
  - a. Arrestee description including name, date of birth, address, race, sex, physical description, and occupation of arrestee.
  - b. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer.
  - c. Conviction information, including the name of any person convicted of a criminal offense.
  - d. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person.
  - e. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred.
  - f. A crime summary, including a departmental summary of crimes reported and public calls for service by classification, nature, and number.
  - g. Radio log, including a chronological listing of the calls dispatched.
  - h. General registers, including jail booking information.

Approved April 28, 1989  
Filed April 28, 1989

## CHAPTER 545

SENATE BILL NO. 2231  
(Committee on Judiciary)  
(At the request of the Attorney General)

### **PUBLIC AGENCY ATTORNEY CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to exemptions from the open meetings and open records laws for attorney work product and attorney consultation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Open records and open meetings - Exemptions for attorney work product and attorney consultation.

1. Attorney work product is exempt from the provisions of section 44-04-18. Attorney work product and copies thereof shall not be open to public inspection, examination, or copying unless specifically made public by the public agency receiving such work product.
2. Attorney consultation is exempt from the provisions of section 44-04-19. That portion of a meeting of a public agency during which an attorney consultation occurs may be closed, by a majority vote of the public agency in an open meeting for the purpose of having the attorney consultation. The remainder of the meeting, where no attorney consultation occurs, is an open meeting unless a specific exemption is otherwise applicable.
3. "Attorney work product" means any document or record which:
  - a. Was prepared by an attorney representing a public agency or prepared at such an attorney's express direction;
  - b. Reflects a mental impression, conclusion, litigation strategy, or legal theory of that attorney or the agency; and
  - c. Was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings in anticipation of imminent civil or criminal litigation or adversarial administrative proceedings.
4. "Attorney consultation" means any discussion between a public agency and its attorney in instances in which the public agency seeks or receives the attorney's advice concerning pending civil or criminal litigation or pending adversarial administrative proceedings.



5. "Public agency" means all public or governmental bodies, boards, bureaus, commissions, or agencies of the state, or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds or expending public funds.
6. "Adversarial administrative proceedings" include only those administrative proceedings where the administrative agency acts as a complainant or respondent in an adverse administrative proceeding before another agency. This term does not refer to those instances where the administrative agency acts in its own rulemaking, adjudicative, or quasi-judicial capacity.
7. Following the final completion of the civil or criminal litigation or the adversarial administrative proceeding, including the exhaustion of all appellate remedies, attorney work product must be made available for public disclosure by the public agency.

Approved April 6, 1989  
Filed April 7, 1989

## CHAPTER 546

HOUSE BILL NO. 1356  
(Representative Ulmer)  
(Senators Satrom, Mushik)

### STATE TRAVEL EXPENSE PREPAYMENT

AN ACT to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to prepayment of travel expenses for state officers and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Prepayment of travel expenses of state officers and employees. Any travel expense, including airline tickets and registration fees, that must be incurred more than five weeks in advance of approved travel of any elected or appointed officer, employee, representative, or agent of this state to meet necessary deadlines or to obtain low rates must be purchased prepaid by the state. No state entity may require an officer, employee, representative, or agent of the state to pay these expenses.

Approved March 22, 1989  
Filed March 23, 1989

## CHAPTER 547

HOUSE BILL NO. 1152  
(Committee on State and Federal Government)  
(At the request of the Secretary of State)

### NOTARY SEALS

AN ACT to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to validation of certificates of acknowledgment; and to amend and reenact section 44-08-06 of the North Dakota Century Code, relating to the requirements of notary seals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-06. Dimensions of seal of court or officer. Upon every seal of a court or officer of this state required or authorized to have a seal, there must be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used. All such seals, except the great seal, must be ~~embossed~~, surrounded by a border, and either one and five-eighths ~~of an~~ inch [41.28 millimeters] in diameter or of a rectangular design, seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.

SECTION 2. A new section to chapter 44-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Validation - Certificates of acknowledgment. All certificates of acknowledgment by notaries public on all documents filed for record with a register of deeds in the state, notwithstanding any defects or irregularities with the notary seal, are hereby validated, ratified, approved, and confirmed. Notwithstanding section 44-08-06, all seals of a court or officer of this state are binding, legal, and enforceable. The provisions of this section relating to validation of acknowledgments are applicable to all documents filed with any county register of deeds in the state after July 1, 1987.

Approved April 13, 1989  
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